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TAX FACT SHEET • TRUSTS

Minimum Trust Tax at 30%

Treasury's exposure draft legislation explained — a practical guide for private groups operating through discretionary trusts.

R J Sanderson & Associates Pty Ltd • Public Accountants

Draft legislation has arrived

The next stage of the Government's proposed 30% minimum tax on discretionary trusts has arrived, with Treasury releasing exposure draft legislation and associated materials. This release continues the Government's rapid implementation of the 2026 Federal Budget measures following the release of a consultation paper in July.

The exposure draft addresses a number of stakeholder concerns raised during consultation. However, the fundamental architecture of the regime remains largely unchanged. For many private groups, the key questions will still be whether restructuring is required, whether the new election regime is viable, and how the rules interact with other parts of the tax system. Those issues will require careful analysis well before the proposed commencement date of 1 July 2028.

KEY DEVELOPMENTS INCLUDE

- A new election mechanism that may allow some existing discretionary trusts to remain outside the regime without restructuring
- An expanded definition of fixed trust
- Further details to the roll-over relief available for a three-year period for groups that choose to restructure

30%

Minimum tax applied at the trustee level on discretionary trust income

1 July 2028

Proposed commencement date for the regime

55–60%

Effective double taxation where corporate beneficiaries are used

18 Sept 2026

Consultation on the exposure draft closes

Background

The Government's proposed 30% minimum tax on discretionary trusts represents one of the most significant changes to the taxation of private groups in recent years. First announced in the 2026-27 Federal Budget, the measure is intended to limit the tax advantages associated with income splitting through discretionary trusts and is proposed to apply from 1 July 2028.

> **Most significantly, the use of corporate beneficiaries will become practically prohibitive as the 30% trustee tax is not creditable to a beneficiary that is a company, resulting in double taxation at 55% to 60%, before the profits of the company are even distributed to its shareholders.**

Following consultation in July 2026, Treasury has now released the first tranche of exposure draft legislation outlining how the regime is intended to operate.

What has changed since the consultation paper?

Several significant changes have been introduced. Most notably, Treasury has proposed a new elective regime for existing discretionary trusts. Rather than restructuring, certain trusts that exist on 1 July 2028 can nominate fixed percentage entitlements for beneficiaries and effectively opt out of the minimum tax regime. Treasury has also proposed a significantly broader definition of "fixed trust", expanded exclusions for testamentary trusts, and provided further details to the roll-over relief available for a three-year period for affected trusts that choose to restructure.

Which trusts are within scope of the minimum tax?

The minimum tax will apply to discretionary trusts, meaning fixed trusts are generally excluded. Importantly, the exposure draft expands the definition of a fixed trust to allow more commercial trust structures, including many unit trusts, to qualify where there are no material discretionary elements affecting beneficiaries' rights or entitlements. MITs, AMITs and other widely held trusts are also not intended to be captured. In addition, deceased estates and discretionary testamentary trusts established for genuine testamentary purposes will generally remain outside the regime.

How can discretionary trusts opt out of the minimum tax?

One of the most significant developments in the exposure draft is the introduction of a mechanism that allows some discretionary trusts to effectively opt out of the minimum tax regime. Rather than restructuring, a trust that existed on 1 July 2028 can elect to nominate specific beneficiaries and, for tax purposes, 'fix' their entitlements to the income and capital of the trust. This option may allow discretionary trusts to fall outside the scope of the regime without actually having to incur stamp duty and legal costs associated with actually transferring assets to another entity.

The draft legislation requires that each nominated beneficiary must take the same share of both income and capital. Importantly, there is no limit on the number of beneficiaries that can be nominated and those beneficiaries can include individuals, trust and certain companies, but not partnerships or complying superannuation funds. The practical effect is that future trust income can continue to be distributed to those nominated entities and taxed in their hands, rather than being subject to the minimum tax at the trust level.

The trade-off for this flexibility is a significant reduction in future discretion. The nominated beneficiaries and their fixed entitlements are generally locked in, with changes only permitted in limited circumstances such as the death of a beneficiary or a family breakdown. On a positive note, the election can, however, be revoked at the discretion of the trustee or if circumstances change such as the trustee distributing other than in accordance with the nominations, or the winding up of one of the nominated beneficiaries. If that occurs, the trustee will be taxed at the top marginal tax rate in the year of revocation (including loss of CGT discount and indexation for that year), with the trust becoming subject to the minimum tax regime in subsequent years.

What restructures can be undertaken?

Consistent with the Federal Budget announcement, the exposure draft includes a temporary three-year roll-over relief for restructures undertaken between 1 July 2027 to 30 June 2030, allowing discretionary trusts to transfer their assets into a company or fixed trust without triggering immediate income tax consequences, including CGT. For businesses that hold significant land, goodwill or other CGT assets through discretionary trusts, this relief may provide a practical pathway out of the regime.

However, the roll-over only addresses income tax consequences and does not remove potential stamp duty and other transaction costs associated with a restructure, which will need to be carefully assessed. Existing roll-overs (such as the 122-A rollover from a trust to a wholly owned company) will continue to be available.

ROLL-OVER WINDOW

- Restructures undertaken between 1 July 2027 and 30 June 2030 qualify for temporary relief
- Relief covers income tax and CGT only — stamp duty and transaction costs still apply

What areas still require careful consideration?

While the core framework has now been released, taxpayers and advisers will need to carefully consider how the minimum tax operates alongside existing parts of the tax law, including foreign income tax offsets, withholding tax regimes, franking credits, and other international tax provisions. Consideration will also need to be given to existing trust group arrangements, including the ability to utilise losses across trust structures. These issues are likely to be particularly important for larger private groups and those with cross-border investments or more complex trust structures.

What are the next steps?

The legislation remains in draft form and consultation is open until 18 September 2026. Treasury has made it clear that today's package represents only the first tranche of legislation and that additional administrative, integrity and interaction measures will be released later.

For groups operating through discretionary trusts, particularly those holding business assets, land or goodwill, now is the time to understand how the proposed rules may apply. While today's release provides greater clarity, many important practical questions remain unanswered, and the final form of the legislation is still likely to evolve through consultation.

TALK TO US

Review your trust arrangements now

Clients should contact their R J Sanderson & Associates Pty Ltd representative to review their existing arrangements and determine what action is required in light of the changes.

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